

Section II. Home Improvement

Chapter 5. Home Improvement

Home improvement is the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property and includes but is not limited to, the construction, erection, replacement, or improvement of driveways, swimming pools (including spas and hot tubs), terraces, patios, awnings, storm windows, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements of the structure on land which is adjacent to a dwelling house.

HOME IMPROVEMENT CONTRACTOR

A home improvement contractor, including a swimming pool contractor, is a contractor licensed by the Contractors State License Board (CSLB) who is engaged in the business of home improvement either full-time or part-time.

The CSLB was mandated by the Legislature to establish a certification program for home improvement contractors. Current law requires that the certification program includes a study booklet. Beginning July 1, 2000, any contractor who engages in the business of home improvement and/or who provides goods and services for home improvement within his or her license classification(s) must be certified as a home improvement contractor.

How is home improvement certification obtained?

- Only applicants who hold a current and valid contractor's license may apply.
- The applicant must take and pass an open book examination on the business, the law, and the construction skills related to home improvement contracting.
- If a license has been obtained by a qualifying individual, that qualifier must take and pass the license certification examination.
- The open book examination will consist of approximately twenty multiple-choice questions based on the *Home Improvement Reference Booklet* provided by the CSLB.

Where is the examination taken?

Taking the Home Improvement Examination on the Internet

The home improvement contractor (qualifier) may take

the open book examination on the CSLB's Internet Web site (www.cslb.ca.gov).

- Only applicants (qualifier) with the appropriate identification information will be logged onto the examination.
- The application, booklet, and examination will be online.
- The examination will be scored online, providing immediate results to the applicant and the CSLB.
- The examination may be retaken until passed.
- The application must be PRINTED and SIGNED, then mailed to the specified address.

Taking the Home Improvement Examination by Mail

Home Improvement Certification packets are automatically mailed to all contractors (qualifiers) who pass a contractor's examination.

- This packet will contain a copy of the booklet, an examination, and an application for certification.
- After completing the open book examination and SIGNING the application, the application-answer sheet must be mailed to the CSLB at the specified address.
- Upon passage of the examination, a new pocket license bearing the home improvement certification will be mailed to the contractor.
- If the examination was failed, a new examination will be mailed to the contractor.
- The Internet may be used instead of the paper exam at any time.

HOME IMPROVEMENT SALESPERSON (HIS) REGISTRATION

Broadly defined, "home improvement" consists of repairs, remodeling alterations, or additions to residential property, the installation of home improvement goods, or the furnishing of home improvement services. Home improvement goods include goods which are to be affixed so that they become part of the real property (whether or not they can be detached) and would include such items as carpeting, fencing, heating or air conditioning equipment. Among examples of home improvement services are painting, roofing, and insulation. (*See Section 7151 of the Business and Professions Code.*)

What is a home improvement salesperson?

A home improvement salesperson, (HIS), is defined in the law as a person who is employed by a licensed contractor to solicit, sell, negotiate, or execute contracts under which home improvements may be performed, a swimming pool constructed, or home improvement goods or services installed or furnished.

Who must be registered as a home improvement salesperson?

Anyone who solicits, sells, negotiates or executes home improvement contracts for a licensed contractor outside the contractor's normal place of business, regardless of the dollar amount of those contracts, must be registered with the CSLB.

Salespersons who only sell goods or negotiate contracts at a fixed business establishment where the goods or services are exhibited or offered for sale are not considered home improvement salespersons.

The official personnel listed in the CSLB's records for the contractor's license are exempt from registration requirements. This includes individual contractors, partners, officers of the corporation, and responsible managing employees.

May a home improvement salesperson work for more than one contractor?

Yes. A home improvement salesperson may work for any number of contractors and sell a variety of goods and services, but a salesperson employed by more than one contractor must register separately for each contractor. Each registration will require a separate application and registration fee. Each time a home improvement salesperson changes employment from one contractor to another, or is employed by an additional contractor, he or she must become registered as a home improvement salesperson for the new contractor. Each contractor's license must be current and active.

What are the qualifications for a home improvement salesperson?

A home improvement salesperson must be at least 18 years of age. There are no experience, residency or educational requirements.

How do I apply for registration?

Obtain an Application for Registration as a Home Improvement Salesperson from any office of the CSLB, by telephone from CSLB's automated public information line, (800) 321-CSLB (2752), or via the CSLB Web site, www.cslb.ca.gov. Then, do the following:

- Read carefully and follow all instructions on the application form;
- Complete the form in ink or use a typewriter. Both you and your employer must sign the application; and
- Submit the required nonrefundable, nontransferable application fee and your application to the CSLB headquarters office.

May I begin working as a HIS as soon as I have submitted my registration application and fee to the CSLB?

No. Your application must be reviewed and a registration number must be issued to you before you legally may work as a home improvement salesperson.

How long will it take to become registered?

CSLB's processing times vary depending on its workload, staff vacancies, etc.

When does my HIS registration expire?

The HIS registration expires two years from the last day of the month in which it was issued. The CSLB will mail a renewal application to your address of record several weeks before your registration expires. Upon verification of the renewal, a new registration certificate will be mailed showing the new expiration date.

If your address has changed since your registration was issued or last renewed, it is your responsibility to notify the CSLB in writing within 90 days of the change.

If you have not received an advance notification of renewal, notify the board. This should be done no later than three weeks before your registration expires.

Is a contract sold or negotiated by an unregistered salesperson enforceable?

The law does not specifically state that the contract would be unenforceable, but since other factors involved could have a bearing on its enforceability, questions about specific contracts should be referred to an attorney. According to Section 7154 of the Business and Professions Code, a contractor who employs an unregistered person to negotiate home improvement contracts is subject to disciplinary action by the registrar. Furthermore, Section 7153 of the Business and Professions Code states that it is a misdemeanor for a person to act as a home improvement salesperson without being registered. In addition to this possibility of criminal action, that same section provides that a citation may be issued for acting as an unregistered salesperson.

For additional information, refer to Sections 7150 through 7173 of the Business and Professions Code in Chapter 12 of this book.

HOME IMPROVEMENT CONTRACTS

The home improvement business in California constitutes a large portion of the state's construction industry. Because of the very nature of the home improvement field there is a potential for problems or abuses to occur. Abuses are usually caused by unlicensed operators or unethical or incompetent contractors. Problems can occur because of a general misunderstanding of basic requirements and of the agreement entered into by the owner and the contractor. Special requirements concerning the home improvement contract were placed into the law as an

attempt to eliminate as many of these problems as possible. It is important that contractors keep abreast of current requirements.

A home improvement contract is an agreement, whether oral or written or contained in one or more documents between a contractor and owner or between a contractor and tenant, for the performance of a home improvement.

1. **Enforcement of License Law.** Section 7159 of the Contractors' State License Law provides for specific requirements to be included in contracts with owners or tenants for home improvements and the construction of swimming pools when the home improvement contractor or the swimming pool contractor is acting as a prime contractor. The primary purpose of Section 7159 is the enforcement of the Contractors' State License Law as it relates to home improvements and the construction of swimming pools on residential property.
2. **Provisions of Other Laws Must Be Included.** The provisions of Section 7159 are not all inclusive as to what must be included in a written contract. Other information must be given to the homeowner or tenant. For example, the notice about questions concerning a contractor, as specified in Section 7030, and the notice about disclosure of prior disciplinary action, as specified in Section 7030.1, must be given. The checklists outlined in Section 7159.3 and in regulation (Board Rules 872 and 872.1) are also required. Furthermore, all statements, writings, or notices required by other state or federal laws such as "Truth in Lending" or "Notice of Right to Cancel" provisions, must also be included, where applicable. The contract may include other matters agreed to between the parties.
3. **Contracts in Excess of \$500.** A prime contractor who is licensed or subject to the provisions of the Contractors' State License Law must adhere to the requirements of Section 7159 when he or she enters into a contract with an owner or tenant to repair, remodel, alter, convert, or modernize residential property, or to construct a swimming pool. The contract must be in writing if the total contract price, including all labor, services and materials to be furnished by the contractor in one or more contracts, exceeds \$500.
4. **Swimming Pool Contractor.** A revision in the Contractors' State License Law, which became effective on January 1, 1992, combined all the provisions of swimming pool contracts with those of home improvement contracts. All the provisions of home improvement contracts apply to contracts for the construction of swimming pools. However, there are some additional provisions which are exclusive to swimming pools. Also, there are two exceptions to the requirements under the provisions of the Home Improvement Act for swimming pool contractors. (1) A swimming pool built for use and enjoyment of other than a single family unit is exempt from the provisions. (2) A swimming pool built as part of an original building plan by the same contractor who builds a single-family dwelling unit on the premises is exempt.
5. **Swimming Pool Construction, Owner-Built.** Specialty contractors hired by owner-builders are prime contractors and as such are subject to Section 7159.
6. **Contract Requirements.** A contractor entering into a contract for home improvement which amounts to more than \$500 must put the contract and any changes to the contract into writing and it must be signed by all parties. The writing, as specified in Contractors' State License Law Section 7159, must contain:
 - The name, address and license number of the contractor, and the name and registration number, if applicable, of any salesperson who solicited or negotiated the contract.
 - The approximate dates when the work will begin and be completed.
 - For a swimming pool: a plan and scale drawing showing the shape, size dimensions, and construction and equipment specifications for a swimming pool.
 - For other home improvements: a description of the work to be done and description of the materials to be used and equipment to be used or installed.
 - The agreed consideration for the work.
 - For swimming pools: if the payment schedule contained in the contract provides for a downpayment before the commencement of work, the downpayment may not exceed the lesser of two hundred dollars (\$200) or 2 percent of the contract price, excluding finance charges.
 - For other home improvements: If the payment schedule contained in the contract provides for a downpayment before the commencement of work, the downpayment may not exceed the lesser of one thousand dollars (\$1,000) or 10 percent of the contract price, excluding finance charges.
 - A schedule of payments showing the amount of each payment as a sum in dollars and cents. The schedule of payments must specifically reference the amount of work or services to be performed and the materials and equipment to be supplied.
 - The contract shall state that upon satisfactory payment being made for any portion of the work being performed, the contractor shall, prior to any further payment being made, furnish to the owner or tenant contracting for the home improvement or swimming pool, a full and unconditional release from any claim or mechanic's lien for that portion of the work for which payment has been made. This requirement includes not only the contractor's full and unconditional release but also full and unconditional releases from all subcontractors and material suppliers.

- In close proximity to the signature, the contract must state that the owner has the right to require the contractor to have a performance and payment bond.
- A notice that failure by the contractor, without lawful excuse, to substantially commence work within 20 days from the approximate date specified in the contract when work will begin, is a violation of the Contractors License Law.
- The contract may also contain other matters agreed to and the writing shall be legible and be in a form that clearly describes any other document which is to be incorporated into the contract.
- Prior to work being performed, the contractor is required to furnish the owner with a copy of the written agreement signed by the contractor.

Some of the above notices do not apply under some circumstances. (*See Section 7159 (g).*)

The written contract must also contain:

- The notice regarding questions concerning a contractor required by Section 7030.
 - The language of the *Notice to Owner* form required by Section 7018.5.
 - The notice on commercial general liability insurance and the checklists for homeowners on home improvement and swimming pool construction outlined in B&P Code Section 7159.3 and Board Rules 872 and 872.1.
 - A *Truth in Lending Notice*, if applicable.
 - A *Notice of the Right to Cancel*, if applicable.
7. **Changes to a Contract.** Any changes to a contract for home improvement must be put into writing and signed by all parties prior to the work being performed.
 8. **Downpayment.** On contracts for home improvements other than for swimming pools, the payment schedule may provide and a home improvement contractor may receive up to 10 percent of the total contract price or \$1,000, whichever is the lesser amount, as a downpayment. On contracts for swimming pools, the swimming pool contractor may receive no more than \$200 or 2 percent of the contract price, whichever is less, for a downpayment.
 9. **Progress Payments On Home Improvement Contracts (Other Than Swimming Pool Contracts).** The payment schedule on home improvement contracts other than for swimming pools may provide for progress payments, but these payments cannot be in excess of the value of the work completed at any given time, excluding finance charges. This means the value of the work performed in relation to the total cost of the project. For example, on a \$5,000 contract, the contractor may receive \$500 as a downpayment. A payment schedule could be set up requiring progress payments when 25 percent, 50

percent and 75 percent of the work has been completed and final payment upon completion of the project. When 25 percent of the work is completed, the payment due would be \$750 (\$1,250 minus the \$500 downpayment). The second \$1,250 would be due when the project is 50 percent completed and so on until the final payment is made when the project is completed.

10. **Progress Payments On Swimming Pool Contracts.**

The payment schedule on swimming pool contracts is similar to the schedule for home improvements, except for the downpayment and the final payment. The downpayment can be no more than \$200 or 2 percent, whichever is less. The final payment may be made at the completion of the final plastering phase of construction provided that any installation or construction of equipment, decking or fencing required by the contract is completed.

11. **Bond Alternative to Payment Schedule.** If a contractor wishes to receive more than ten percent or \$1,000 as a downpayment and/or wishes to receive payments on a schedule that results in his or her receiving more money on the project than the value of the work performed at any given time, he or she can do so if the contract provides for the contractor to furnish (1) a performance and payment bond, (2) a lien and completion bond, or (3) a bond equivalent approved by the Registrar. If the contractor provides one of the above bonds, the bond must cover 100 percent of the contract value. Therefore, if one of the bonds mentioned above was provided by the contractor and assuming the owner otherwise agreed, then the contractor could receive any amount of money in advance on the project and/or arrange any payment schedule he or she desired without regard or limit to the actual value of the work completed on the project at any given point in time.

12. **Alternative to Performance and Payment Bond, etc.**

Although the Registrar has been given the authority to accept a bond equivalent, the conditions for any alternative to the bond are so restrictive and the financial condition so prohibitive that only a very few contractors are willing or able to comply with requirements for a bond equivalent.

13. **Joint Control.** A joint control, as approved by the Registrar, covering full performance and completion of the contract can be used as an alternative to payment requirements in the contract. A joint control acts as an escrow holder of a consumer's money and prevents the contractor from being paid more than the value of work already completed. It also safeguards the consumer's property from a mechanics' lien. Although a joint control service relieves the contractor from the requirement of actually including a payment schedule in the contract, the joint control company must dispense all payments in accordance with the payment schedule as provided in Section 7159. Any joint control to be approved by the Registrar must include an addendum which was developed through

mutual agreement of the Registrar and joint control company representatives. A copy of the addendum is included in this chapter.

14. **Salesperson's Commission.** If the contract provides for a payment of a salesperson's commission out of the contract price, the payment shall be made on a pro rata basis in proportion to the schedule of payments.
15. **Building Permits.** The obtaining of a building permit is considered work performed and payment can be received for the actual cost of the permit after it has been issued.
16. **Preparation of Plans.** The preparation of plans for a project is considered work performed and payment can be received to pay for the cost of the plans. The amount charged for the plans must be based upon the fair market value of the plans.
17. **Finance Charges.** It is not expected that finance charges are to be considered as part of the amount of the contract between the owner and the contractor. Although finance charges in many instances are included on the contract form, in compliance with state and/or federal law, they are not considered under Section 7159 when determining the amount of payment which can be made at any particular phase of the project. Only actual construction costs to the owner are considered.
18. **Failure to Commence Work on Time.** A contractor who, without lawful excuse, fails to substantially commence work within 20 days from the approximate date specified in the contract for work to begin is in violation of Section 7159.
19. **Violation of Section 7159.** A violation of Section 7159 by a licensee or an applicant for a license is a misdemeanor. The misdemeanor is punishable by a fine of not less than \$100 nor more than \$5,000 or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment.
20. **State of Emergency Violation.** An additional penalty shall be imposed for any fraudulent action committed against a homeowner in connection with the offer or repair of structures damaged by a natural disaster that is covered by the Governor's or President's Emergency Proclamation. The court may impose a minimum additional fine of \$500 or a maximum of \$25,000 per violation.
21. **Kickback Penalty.** A contractor may give tangible items not to exceed a value of \$5 to prospective customers for advertising or sales promotion purposes, but the gift cannot be conditioned on obtaining a home improvement contract. Only one of these gifts may be given per transaction. Giving all other gifts or inducements to compensate or reward an owner for the procurement of a home improvement transaction is a misdemeanor and a cause for legal action.

REGISTRAR-APPROVED JOINT CONTROL AGREEMENTS

Section 7159 of the Business and Professions Code provides for the use of a joint control approved by the Registrar of Contractors "covering full performance and completion of the contract" as an alternative to certain contract requirements. When a joint control is used, no schedule of payments is required in the contract.

A joint control is a builder's construction control service which acts as an escrow holder of a consumer's money. A joint control company manages the disbursement of funds to prevent you, the contractor, from being paid more than the value of the work already completed. A joint control also safeguards the consumer's property from mechanics' liens by requiring you, the contractor, to supply lien releases as progress payments are made to you.

A joint control normally includes an analysis of the contract and building plans or specifications, breakdowns of cost, and the preparation of an account from which the funds will be disbursed on regularly scheduled progress payments. An addendum (*see page 30*) must be incorporated into joint control agreements for any joint control company to be considered approved by the Registrar of Contractors.

The CSLB does not license joint control companies, nor does CSLB have any legal jurisdiction over joint control company activities. The criteria for "Registrar approval" was developed through mutual agreement of the CSLB and joint control company representatives. The resulting addendum (which follows), if included in the control agreement and followed, should prove to be beneficial to both contractors and consumers.

The CSLB does not maintain lists of approved joint control companies nor monitor their activities. Registrar approval is implicit if the addendum is used. Responsibility for incorporating the addendum in agreements will rest solely with the joint control companies. Contractors and consumers should compare any joint control agreement with the following addendum to ensure that the control supplies the services required for approval.

NOTE: The last paragraph in the joint control addendum pertains to home improvement contracts other than swimming pool contracts. On all swimming pool contracts the downpayment cannot exceed \$200 or 2 percent of the total contract price. The conditions relative to the downpayment for swimming pools and other home improvement contracts must be met if a joint control is not used.

NOTICE TO OWNER

The "Notice to Owner" (*see page 31*) describes, in non-technical language, pertinent provisions of the state's mechanics' lien laws which specify the rights and responsibilities of both the property owner and the contractor.

This notice must be a part of any home improvement contract, including swimming pool contracts, which exceeds \$500.

NOTE: The "Notice to Owner" refers to a "Preliminary Notice," which in turn contains a "Notice to Property Owner." These notices are described in Chapter 6 of this book.

JOINT CONTROL ADDENDUM

Addendum to Control Agreement/Escrow Instructions

This addendum is hereby incorporated into and becomes a part of the Control Agreement attached hereto dated _____.

1. Should any of the terms or provisions of the contract between Owner and Contractor or of the contract into which this Addendum is incorporated conflict with any of the terms or provisions of this Addendum, then the terms of this Addendum shall prevail.
2. Control agrees to control and disburse funds in the following manner:
 - a) Supplier or subcontractor submits to contractor duplicate copies of invoices requesting payment.
 - b) If payment is justified, based on work completed, control accepts disbursement order or voucher in favor of payee for net amount.
 - c) After signing by the contractor and the payee concerned, order for payment together with copies of invoices, unconditional lien releases and/or other substantiating data is delivered or mailed to the Control for payment.
3. Prior to issuing payment, Control agrees to verify:
 - a) That all vouchers have authorized signatures.
 - b) That adequate unconditional lien releases have been submitted in writing.
 - c) That sufficient funds are on hand to pay the specific invoice(s) submitted.
4. Prior to issuing final payment, Control agrees to verify that project has passed final inspection by local building authorities, unless the scope of the contracted project does not require a final inspection.
5. After verification of the above, checks shall be made out payable to the supplier or subcontractor, or to the prime contractor and supplier or subcontractor, jointly.
6. Control agrees that in no event shall it disburse payments in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges.
7. The funds from this account shall be used only for the project described in the contract. Control warrants that work and material paid for by Control has been provided.
8. If this agreement is terminated for any reason prior to disbursement of all monies payable under the contract between Owner and Contractor, all subsequent disbursements to Contractor shall conform to the requirements of Section 7159 of the Business and Professions Code.

NOTE: Section 7159 of the Business and Professions Code requires that all change orders be in writing and signed by all parties.

SO AGREED this _____ day of _____, 19_____.

CONTROL

OWNER

CONTRACTOR

OWNER

Contractors who furnish a joint control as part of the terms of a home improvement contract should be aware that the law prohibits them from having any financial or other interest in the joint control company. Also, it is the contractor's responsibility to determine whether or not the above addendum is included in the control agreement.

If an approved joint control or bond covering the complete contract is not furnished with a home improvement contract, the contractor may not require a down payment in excess of \$1,000 or 10 percent of the total contract price, whichever is less. The contract must also contain a schedule of payments stated in dollars and cents and specifically referenced to the work or services to be performed or the materials and equipment to be supplied. Also, no payments other than the down payment can be in excess of the value of the work (excluding finance charges) performed at any time on the project.

NOTICE TO OWNER

Under the California Mechanics' Lien Law, any contractor, subcontractor, laborer, supplier, or other person or entity who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your home, land, and property could be sold by a court officer and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor's subcontractors, laborers, or suppliers remain unpaid.

To preserve their rights to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are each required to provide you with a document called a "Preliminary Notice."

Contractors and laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a mechanics' lien with the county recorder which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a mechanics' lien against your property is 90 days after substantial completion of your project.

TO INSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:

- (1) Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection. The payment and performance bond will usually cost from 1 to 5 percent of the contract amount depending on the contractor's bonding ability. If a contractor cannot obtain such bonding, it may indicate his or her financial incapacity.
- (2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee, in your area which will establish voucher or other means of payment to your contractor. These services may also provide you with lien waivers and other forms of protection. Any joint control agreement should include the addendum approved by the registrar.
- (3) Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. The joint checks should be made payable to the persons or entities which send preliminary notices to you. Those persons or entities have indicated that they may have lien rights on your property, therefore you need to protect yourself. This will help to insure that all persons due payment are actually paid.
- (4) Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional "Waiver and Release" forms signed by each material supplier, subcontractor, and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language in Section 3262 of the Civil Code. Most stationery stores will sell the "Waiver and Release" forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single-family residence or a duplex owned by individuals, the persons signing these releases lose the right to file a mechanics' lien claim against your property. In other types of construction, this protection may still be important, but may not be as complete.

To protect yourself under this option, you must be certain that all material suppliers, subcontractors, and laborers have signed the "Waiver and Release" form. If a mechanics' lien has been filed against your property, it can only be voluntarily released by a recorded "Release of Mechanics' Lien" signed by the person or entity that filed the mechanics' lien against your property unless the lawsuit to enforce the lien was not timely filed. You should not make any final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property.

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